THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No :16451 of 2006

DATED:13-04-2007

S.Hanumantha Rayudu.

.....
PETITIONER

AND

The Commissioner for Prohibition & Excise,
Government of A.P.,
Secretariat Building,
Hyderabad & 2 others.

.....RESPONDENTS

ORDER:

Heard learned counsel appearing for the petitioner as well as the learned Government Pleader for Excise appearing for the respondents.

2. Petitioner seeks a writ of mandamus declaring the action of the respondents in changing the location of the shops shown at S.No8 in the renotification issued in District Gazette (Extraordinary) Anantapur G.No.47/2006, dated

31-07-2006, than originally notified by the 3rd respondent, as illegal and arbitrary.

3. Pursuant to the Gazette notification issued by the District Collector, Anantapur, dated 26-05-2006, notifying the Indian made Foreign liquor shops to be auctioned by inviting tenders, petitioner participated in the said auction and became the highest bidder in respect of the Gazette S.No.8 situated at Anantapur Municipal Corporation at Municipal Election Division No.13 on an yearly lease amount of Rs.33,23,116/- and obtained licence for the Excise year 2006-07 commencing from 01-07-2006 to 30-06-2006. Thereafter another gazette notification, dated 31-07-2006, has been issued renotifying the original G.S.No.28, Anantapur from Municipal Election Division No.40 to the Municipal Election

Division No.13 i.e., within the locality of the petitioner. The said action of the respondent has been questioned by the petitioner even before the said shop has been auctioned.

4. This Court while admitting the Writ Petition on 07-08-2006 granted interim stay of all further proceedings pursuant to the said Gazette notification No.47/2006 published in the Gazette dated 31-07-2006.

5. This Court while considering the similar contentions in W.P.No.215 of 2007 held that once the gazette notification has been issued pursuant to the approval of the location, number of the shop in particular areas, mandals, municipalities, municipal corporations, it is not permissible for shifting a shop. Even for shifting a shop procedure has to be contemplated under Rule 29(3) of the Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 after recording valid reasons. In the instant case merely because the shop at G.S.No.28 at Municipal Election Division No.40, Shop No.1 was not disposed of it cannot be said that the respondents have got the right to relocate it at Municipal Election Division No.13 where the shop notifying at G.S.No.8 in the Municipal Election Division No.13 was already auctioned in the Gazette. Had there been two shops notified at Municipal Election Division No.13 the petitioner would not have submitted his tender for the aforesaid amount.

6. Having regard to the facts and circumstances of the case, and for the reasons stated in the above Writ Petition, this Writ

Petition is allowed. No order as to costs.

_____

V.ESWARAIAH,J

13th February, 2007.

Tsy